



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 11/9/2020

ORM Number: SWG-2019-00759

Associated JDs: SWG-2019-00759, (Rapanos JD 27 APR 2020)

Review Area Location¹: State/Territory: Texas City: Corpus Christi County/Parish/Borough: Nueces

Center Coordinates of Review Area: Latitude 27.721662 North Longitude 97.140090 West

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
MHW	2.43 acre(s)	RHA Tidal water is subject to the ebb and flow of the tide	The Gulf of Mexico (GOM) is a water that is affected by the daily tide that is also used for the transport to interstate and/or foreign commerce. This area includes all waters below the MHW mark.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
HTL	3.15 acre(s)	(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide (CWA	This aquatic resource area includes all of the Section 10 waters (2.43 acres) that are used for the transport of interstate commerce plus includes all areas waterward of the high tide line (an additional 1.72 acres).

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
		Section 404 ONLY.	

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland (a)	7.62	acre(s)	(b)(1) Non-adjacent wetland.	This wetland (as identified by the Atlantic Gulf Coastal Regional Supplement) does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.

Excluded waters ((b)(1) – (b)(12)): ⁶				
Exclusion Name	Exclusion Size		Exclusion ⁷	Rationale for Exclusion Determination
Wetland (b)	0.02	acre(s)	(b)(1) Non-adjacent wetland.	This wetland (as identified by the Atlantic Gulf Coastal Regional Supplement) does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

⁶ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁷ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			an artificial dike, barrier, or similar artificial structure.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: [Wetland Delineation Report: 30± Acre Proposed Development 7213 State Highway 361, Corpus Christi, Nueces County, Texas prepared by Coastal Environments, Inc., received 21 FEB 2020 with corrections submitted 16 MAR 2020](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: [minor errors](#)

Data sheets prepared by the Corps: [11 MAR 2020](#)

Photographs: [Aerial: 31 JAN 2020, 29 AUG 2017, 22 FEB 2017, 22 NOV 2014, 26 JAN 2012; source: Google Earth](#)

Corps site visit(s) conducted on: [11 MAR 2020](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [SWG-2019-00759, 27 APR 2020](#)

Antecedent Precipitation Tool: [*provide detailed discussion in Section III.B.*](#)

USDA NRCS Soil Survey: [25 FEB 2020](#)

USFWS NWI maps: [Crane Island NW 25 FEB 2020](#)

USGS topographic maps: [Crane Islands NW, Texas](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	US Geological Survey National Map LiDAR data flown 2018. Elevation in Meters (NAVD88). LiDAR elevation readings in the review area are shown to be within 4 centimeters of elevation difference from the National Geodetic Survey's PIPER RESET Benchmark, approximately 212 feet southwest of the review area.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	Texas Coastal Ocean Observation Network (TCOON) Packery Channel Tidal Gauge, ref. 17 SEP 2020. Elevation in Meters (NAVD88)
Other Sources	N/A.

B. Typical year assessment(s): Based on the location of the wetlands we needed to determine if they would be inundated by surface water flooding in a typical year by an a)1-a)3 water. The nearest a)1-a)3 water and is a tidal water and as such tide guage data was reviewed. As such, TCOON's tide information from the closest tidal gauge to the site was reviewed: it is located at Packery Channel (an inlet to Corpus Christi Bay). The Mean High High Water (defined as the average of the higher high water height of each tidal day observed over the most recent recorded National Tidal Datum Epoch from 1983 to 2001) for Packery Channel is recorded to be 0.241 meter (0.79 foot) NAVD88. This elevation is 1.08 meter (3.54



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feet) lower than the lowest portion of wetland (a) and 0.99 meter (3.24 feet) lower than the lowest portion of wetland (b) and neither is a contiguously lower elevation that would provide surface connection to the nearest a)1-a)3 waters. Numerous aerial photographs were also reviewed and none of them provided evidence that the two wetlands on the site were connected via a surface hydrologic connection to an a)1-a)3 water in a typical year.

C. Additional comments to support AJD: Per the available LiDAR data, the lowest portion of wetland (a) sits at an elevation of 1.32 meters (4.33 feet) NAVD88, and wetland (b) at 1.23 meters (4.03 feet) NAVD88. SH 361 acts as an artificial barrier between the wetlands and Corpus Christi Bay, approximately 0.48 mile northwest of the project site. The nearest culverts under SH 361 from the project site are 1,322 feet to the southwest, and 2,102 feet to the northwest, respectively, with a roadside ditch cut in either direction through uplands 2 to 3 feet higher than the delineated wetlands; thus no surface hydrologic connection on that side.

Wetlands (a) and (b) are separated from the GOM by a complex of dunes several feet higher than the delineated waterbodies, with no discernable path for drainage or inundation from the GOM, approximately 625 feet to the southeast. Wetlands (a) and (b) do not abut the GOM and are separated from an (a)(1) water (GOM) by more than one natural dune line.

In conclusion, based on federal regulations & site-specific data, we have determined that the area waterward of the HTL on the subject parcel are subject to federal jurisdiction under the authorities of Section 404 of the Clean Water Act and those affected by the daily tide are also subject to federal jurisdiction under the authority of Section 10 of the Rivers and Harbors Act.

The two subject wetlands (a & b) do NOT abut an a)1-a)3 water, NOR would they be inundated by flooding of an a)1-a)3 water in a typical year, NOR are they physically separated from an a)1-a)3 water by a single natural barrier, NOR are they physically separated by an artificial barrier that allows direct surface hydrologic connection between the aquatic feature(s) in review and an a)1-a)3 water in a typical year. Therefore, these two aquatic resources are “non-jurisdictional waters” as identified in 33 CFR 328 (b)(1).

SWG-2019-00759 Approx. 30-acre Review Area
Aerial Flown 2018



Wetland (a) (7.62 ac)
27.72278 N
97.14205 W

Wetland (b) (0.02 ac)
27.72167 N
97.14012 W

HTL

Property Line
(as recorded with
Nueces Co. Appraisal District)

MHW

1.72 Ac
2.43 Ac

